

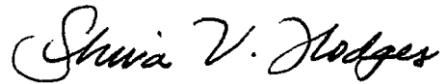
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Grant Francis Treiber,)	C/A No.: 1:12-2242-SVH
)	
Plaintiff,)	
)	
vs.)	
)	ORDER
Carolyn W. Colvin, Acting)	
Commissioner of Social Security)	
Administration,)	
)	
Defendant.)	
)	

This matter is before the court on Plaintiff’s counsel’s motion for fees under 42 U.S.C. § 406(b). [ECF No. 23]. Pursuant to Local Civ. Rule 83.VII.07(A) (D.S.C.), Plaintiff’s counsel must file the petition for attorney’s fees no later than 60 days after the issuance of all notices of award of past due benefits. The rule provides that “[t]his does not preclude filing a petition based on fewer than all anticipated notices of award of benefits,” but requires that the petition contain evidence that the Commissioner is withholding the requested fee. Local Civ. Rule 83.VII.07(A),(B) (D.S.C.). Although Plaintiff’s counsel requests a total fee of \$23,067.00, the attached notice of award indicates that the Commissioner has withheld \$21,131.00, which is 25% of Plaintiff’s past due benefits. *Compare* ECF No. 23 at 3, *with* ECF No. 23-2 at 2. Plaintiff’s counsel states the difference of \$1,936.00 represents 25% of past due benefits for Plaintiff’s daughter and explains how he calculated the amount. [ECF No. 23 at 2–3]. He indicates the local social security office has not processed Plaintiff’s daughter’s claim for auxiliary benefits on Plaintiff’s record and states that he is requesting a fee based on her estimated

past due benefits, as well as Plaintiff's withheld benefits "[t]o avoid having to file a second fee petition with the Court." *Id.* at 2. Although the undersigned commends Plaintiff's counsel's effort to promote judicial economy, the undersigned notes that Local Civ. Rule 83.VII.07(B)'s requirement for "evidence . . . that the Commissioner is withholding the fee" is intended to prevent the court from ordering an attorney fee in excess of the amount withheld. In light of the foregoing, the undersigned orders Plaintiff's counsel to direct the court by May 16, 2016, as to whether he will amend the motion for fees to represent the amount withheld or withdraw the motion for fees pending receipt of a notice of award for Plaintiff's daughter's auxiliary benefits.

IT IS SO ORDERED.



May 2, 2016
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge